

APPEAL NO. 041333
FILED JULY 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 27, 2004. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the injury did not include the neck and back; and that the claimant did not have disability because she did not sustain a compensable injury. In her appeal, the claimant essentially challenges those determinations as being against the great weight of the evidence. In addition, the claimant asserts error in the hearing officer's having sustained an objection to a witness for the claimant because his name was not exchanged with the respondent (carrier). In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed.

Initially, we note that the hearing officer did not err in sustaining the carrier's objection to Mr. P as a witness for the claimant. The claimant does not dispute that Mr. P's name was not exchanged with the carrier. Accordingly, we find no merit in the assertion that the hearing officer erred in excluding his testimony.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The claimant had the burden of proof on that issue. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The injury issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n. v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, there was conflicting evidence presented on the disputed issue. The hearing officer determined that the evidence did not establish that the claimant sustained a compensable injury. She found that the claimant simply was not persuasive in her claim and failed to prove that she fractured her rib or injured her neck and low back at work. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the injury or extent-of-injury determinations on appeal. Pool, *supra*; Cain, *supra*.

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION** for **Legion Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Edward Vilano
Appeals Judge